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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/171,583	11/24/1998	WILLIAM JOHN BAILLIE-HAMILTON	ROCKCOP39AUS	8228

7590

04/09/2003

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EXAMINER

NEILS, PEGGY A

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/171,583

Applicant(s)

BAILLIE-HAMILTON, WILLIAM
JOHN

Examiner

Peggy A. Neils

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 90-103 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 90-99 and 101-103 is/are rejected.
- 7) ☒ Claim(s) 100 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 90-93, 96, 97 and 101-103 are rejected under 35 U.S.C. 102(b) as being anticipated by Verderber.

Verderber shows a light outputting device which includes a containment 30 for housing a light emitting element 41, a light conducting element 32 made from quartz glass, and a refractor 41 positioned between the light emitting element and the light conducting element. See Figure 2. The embodiment shown in Figure 5 shows a reflective surface 50 on the housing surrounding the light emitting element. Lamp 40 is a high intensity lamp.

Response to Arguments

3. Applicant's arguments filed January 16, 2003 have been fully considered but they are not persuasive.

Applicant has stated that the lamp of Verderber must be separate from the light conducting element because it is replaceable and for this reason the lamp cannot be an integral unit with the

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light conducting element. Claim 90 states that the light emitting element, light conducting element and the containment sleeve together form a "unitary optically integrated unit." That language is considered functional and is shown by Verderber. The assembled heat sink, rod and light of Verderber function as a unitary optically integrated unit. The claim language does not structurally define over what is shown by Verderber. Applicant also states that Verderber cannot be custom designed to fit together without corners resulting from different dimensions of the elements. While this may be true, there is nothing in the claim language which addresses a limitation which would define over an assembly having corners.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 94, 95 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verderber.

Verderber does not go into detail about the space encompassing the light emitting element other than to state that it is sealed by a compound 42. However, the prior art discussion in column 1 beginning at line 28 discusses the problems with high intensity lamps and vacuum lamps. It obviously contemplated that the invention is directed toward solving the problem of excessive

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heat build-up caused by these types of lamp. Therefore, it is obvious that the Verderber patent would include a light contained in an envelope which defines a plenum whereby a vacuum or inert gas exists. Also in the absence of any unobvious or unexpected results the manner in which the sleeve is sealed is a matter of design choice. To provide more than one light emitting element displaying different colors is also considered a design choice depending on the intended use for the light emitting device.

6. Applicant's arguments with respect to claims 78 and 89 have been considered but are moot in view of the fact that Ghandehari is no longer being relied upon as a reference.

7. Claim 98 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verderber as applied to claim 90 above, and further in view of Cecil.

Cecil, Jr teaches that it is known in the art to use a glass containment 32 for a light emitting element positioned adjacent to a light conducting element. It would have been obvious to one skilled in the art that Verderber could be modified to have the containment housing made from glass in the same manner as taught by Cecil, Jr. because both references are directed to similar light transmitting devices.

Applicant's comments regarding Cecil have been considered but are not persuasive. Applicant has stated that Cecil is different from the invention in structure, function and operation. It is maintained that structurally Cecil is properly combinable with Verderber. No distinguishing limitations appear in the claims regarding operation or function which would prevent the use of Cecil as a secondary reference.

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Allowable Subject Matter

8. Claim 100 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: Claim 100 is considered to have allowable subject matter because the prior art does not show the containment device and light conducting element being of a similar material and being contiguously juxtaposed with the outer surface of the light conducting element by a fusing operation.

10. ***Conclusion***

Any questions regarding this Office action should be directed to Examiner Neils at (703) 308-6554.



**Y. MY QUACH-LEE
PRIMARY EXAMINER**